87-990

Supreme Court U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

Supreme Court of the United States

OCTOBER TERM, 1987

CLEVELAND RISER, JR.
Petitioner

versus

LASALLE PARISH SCHOOL BOARD, ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

I. Whether or not Cleveland Riser, Jr. was afforded due process and equal protection under the laws of the United States in the presentation of facts, evidence, and testimony to the trial court on the charges of racial discrimination pursuant to 42 U.S.C.A. Section 1981 and 42 U.S.C.A. Section 1983 as contained in the plaintiff's original complaint.

CERTIFICATE OF INTERESTED PARTIES REQUIRED BY THE UNITED STATES SUPREME COURT
Rule 21.1(b)

The undersigned counsel of record for the petitioner, Cleveland Riser, Jr., certifies that the following listed parties have an interest in the outcome of this case:

Cleveland Riser, Jr., Plaintiff-Petitioner
Gregory S. Erwin, Attorney for Plaintiff-Petitioner
S. Scott Chemino, Attorney for Plaintiff-Petitioner
LaSalle Parish School Board, Defendant-Respondent
Edgar J. Bass, Superintendent
Shelby Norris
Robert Coleman
W.D. Poole
Bill Hester
Robert Ponds
Harland Morgan
W.B. McCartney
Robert Day
J.D. Frazier
Ira Ganey
James J. Brady, Attorney for Defendant-Respondant
Bernard Marcus, Attorney for Defendant-Respondant

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1.) *Arlington Heights v. Metro Housing Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).
2.) *Holley v. Seminole County School District*, 755 F.2d 1492 (1985).
3.) *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1943, 52 L.Ed.2d 396 (1977).
4.) *Johnson v. Lincoln University of Commonwealth System of Higher Education*, 776 F.2d 443 (1985).
5.) *Lee v. Conecuh County Board of Education*, 634 F.2d 959 (1981).
6.) *Lee v. Washington County Board of Education*, 625 F.2d 235 (5th Cir. 1980).
7.) *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).
8.) *Paschal v. Florida Public Employment Relations Commission*, 666 F.2d 1381, at 1384 (11th Cir.) cert. denied, 457 U.S. 1109, 102 S.Ct. 2911, 73 L.Ed.2d 1319 (1982).
9.) *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 240, 48 L.Ed.2d 597 (1976).
10.) *Williams v. Anderson*, 562 F.2d 1081 (1977).
11.) *Williams v. Day*, 553 F.2d 1160 (1977).

Statutes and Regulations:

1.) 28 U.S.C.A. 1254(1)
2.) 28 U.S.C.A. 1291
3.) 28 U.S.C.A. 1331(a)
4.) 42 U.S.C.A. 1981
5.) 42 U.S.C.A. 1983
6.) Amendments I and XIV (Section 1), United States Constitution

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LASALLE PARISH SCHOOL BOARD, ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Cleveland Riser, Jr., prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on July 23, 1987, with petition for rehearing denied on August 31, 1987.

OPINIONS BELOW

The opinion and order of the District Court for the Western District of Louisiana No. 83-2237 has not been officially reported but is contained in the record.

The opinion and order of the Court of Appeals for the Fifth Circuit, No. 87-4098, has not been officially reported but is contained in the record.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was made and entered on July 23, 1987; the judgment denying the request for rehearing was made on August 31, 1987.

The judgment of the United States District Court for the Western District of Louisiana, Alexandria Division, was made and entered on February 3, 1987.

The jurisdiction of this court is invoked pursuant to 28 U.S.C.A. Section 1254(1).

CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES AND FEDERAL RULES

1.) 28 U.S.C.A. 1254(1)

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or ciminal case, before or after rendition of the judgment or decree;"

2.) 28 U.S.C.A. 1291

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

3.) 28 U.S.C.A. 1331(a)

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

4.) 42 U.S.C.A. 1981

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

5.) 42 U.S.C.A. 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

6.) United States Constitution Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

7.) United States Constitution Amendment XIV (Section 1)

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Cleveland Riser, Jr., a black citizen, filed the instant action on Sept. 23, 1983, alleging that his termination of employment from the LaSalle Parish School Board on June 3, 1983, violated the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C.A. Sections 1981 and 1983. This is the most recent legal action taken by the plaintiff to correct various deprivations of civil rights which he has suffered through a pattern and history of racial discrimination practiced by the LaSalle Parish School Board.

On May 3, 1983, Cleveland Riser, Jr. was served with written charges of wilfull neglect of duty, incompetency, and dishonesty by his employer, the LaSalle Parish School Board. These charges were brought by the school board against Riser pursuant to seven alleged instances of sexual harassment of female, adult education students directly under Riser's supervision.

A hearing on the foregoing charges was held by the school board on June 2 and 3, 1983, at which the school board and the plaintiff were each represented by counsel. Both parties presented witnesses who were examined and cross-examined, and closing arguments were made by both parties. The evidence and witnesses presented at the hearing were confined strictly to the charges of sexual harassment with no opportunity being given to Riser to raise allegations of racial discrimination and deprivation of rights, privileges, and immunities which form the basis of the instant lawsuit. The school board, which had hired a private investigator and a private prosecutor, found Riser guilty of the seven charges of sexual harassment and dismissed him from employment effective immediately.

As a result of the termination, the present lawsuit was filed and trial of this matter was held before the United

States District Court for the Western District of Louisiana, Alexandria Division, on January 7, 1987. On the morning of the trial, a pre-trial conference was held which resulted in the trial court refusing to allow the plaintiff to present nine of eleven witnesses prepared to testify during the plaintiff's case-in-chief. This exclusion of witnesses and testimony was objected to by the plaintiff's counsel. The action of excluding the witnesses and testimony by the trial court resulted in a failure of the court to take into consideration the issues contained in the plaintiff's complaint which forms the basis of this writ application. The court critically limited the receipt of testimony and evidence and prevented the plaintiff from substantiating and proving the allegations contained in the plaintiff's original complaint. Moreover, the trial court did not allow the presentation of testimony and evidence which was necessary to properly apply the standards and tests that are associated with the proper adjudication of civil rights actions.

Upon receipt of an adverse ruling from the trial court on February 3, 1987, the plaintiff presented this cause to the United States Court of Appeals for the Fifth Circuit. The issue presented to the Court of Appeals was whether the restrictive actions of the court in disallowing specific testimony and evidence sought to be presented by the plaintiff was proper. The Court of Appeals affirmed the trial court's ruling. A petition for rehearing was timely filed by the plaintiff on August 4, 1987. The petition for rehearing was denied by the appeals court on August 31, 1987.

The present application for writ of certiorari to the United States Supreme Court is made pursuant to the order denying the petition for rehearing issued by the United States Court of Appeals for the Fifth Circuit.

The plaintiff's suit was brought at the trial court level

pursuant to 42 U.S.C.A. Sections 1981 and 1983, alleging that he had been terminated from employment in violation of his civil rights. The trial court had jurisdiction based upon 28 U.S.C.A. Section 1331 and 42 U.S.C.A. Sections 1981 and 1983. The United States Court of Appeals for the Fifth Circuit had jurisdiction under 28 U.S.C.A. Section 1291.

ARGUMENT OF LAW AND FACTS

Whether or not Cleveland Riser, Jr. was afforded due process and equal protection under the laws of the United States in the presentation of facts, evidence, and testimony to the trial court on the charges of racial discrimination pursuant to 42 U.S.C.A. Section 1981 and 42 U.S.C.A. Section 1983 as contained in the plaintiff's original complaint.

On May 3, 1983, Cleveland Riser, Jr. was served notice from his employer, the LaSalle Parish School Board, that he was being charged with seven allegations of sexual harassment of female students. The summons stated that this harassment of students constituted wilfull neglect of duty, incompetency, and dishonesty and that pursuant to these allegations, a hearing would be conducted by the school board on June 2, 1983.

The scheduled hearing took place on June 2 and 3, 1983, at the LaSalle Parish School Board Office in Jena, Louisiana. At the time of the hearing, Riser and his attorney were confronted with the procedural manipulations of an independent prosecutor hired by the school board, as well as the investigation results of a private investigator paid by the school board to gather evidence against Riser on the alleged charges of sexual harassment. Seven white female students also testified to alleged actions of harassment by Riser. Riser denied all accounts given by the witnesses. All things equal, it remained his word against those of the witnesses called by the school board. At the conclusion of the hearing, the board agreed to terminate Riser from employment.

The hearing was allegedly "closed" upon choice of Cleveland Riser, Jr. However, the school board made no attempt to curtail news media coverage of the allegations

forming the basis of the school board's actions. News of the hearing was contained in both newspaper and radio broadcast accounts. In preparing to counter these allegations, Riser and his counsel of record prepared a defense strictly to those allegations of neglect of duty, incompetency, and dishonesty which were associated with the sexual harassment charges. As understood in the summons, the hearing was strictly limited to those issues. By virtue of the narrow scope of the school board hearing, there was no cause for Riser to present issues concerning racial discrimination or deprivations of his rights, privileges, and immunities. It is evident that it would have been premature to present issues of racial discrimination to the school board since the outcome of the hearing was not yet known. More importantly, Riser was then concerned about defending himself from the allegations of neglect of duty, incompetency, and dishonesty.

Contrary to this fact is the misconceived notion that Riser was afforded every opportunity to "fully ventilate" any issues of racial discrimination at that hearing. It was impossible to present issues of discrimination and deprivations of constitutionally protected rights, privileges, and immunities at a school board hearing of June 2 and 3, 1983, when the plaintiff's lawsuit outlining those grievances had not yet been filed by Riser.

Regardless of these facts, the trial court on January 7, 1987, never allowed Riser the opportunity to present witnesses, testimony, and evidence necessary to prove the allegations contained in Riser's original complaint on which that very trial was being conducted. Simply stated, the district court on January 7, 1987, was charged with the obligation to try the plaintiff's allegations as alleged in his original complaint which was filed September 22, 1983. Instead, the court chose to determine whether the school board hearing had been properly conducted, some-

thing the court said it was not there to do, and then ruled that Riser had not been discriminated against or deprived of any of his rights, privileges, and immunities. This is totally contrary to the jurisprudence applicable to the implementation of 42 U.S.C.A. 1981 and 1983. The Honorable Court of Appeals is also in error for not recognizing this error on the part of the Honorable Trial Court.

The error of the trial court lies in the critical restriction placed on Riser's ability to present a full-scale presentation of witnesses and evidence on the day of the trial. By preventing the plaintiff from substantiating the allegations of his complaint with the testimony of witnesses and the presentation of evidence, both courts have failed to apply the proper burdens of proof, standards, and tests necessary to afford Riser the due process and equal protection that he is guaranteed under the Fourteenth Amendment of the United States Constitution. In effect, these decisions have made the findings of the administrative hearings of June 2 and 3, 1983, final. In so doing, the courts are not affording Riser the opportunity to ventilate his allegations contained in the instant lawsuit.

The trial and appellate courts' actions are tantamount to rendering a summary judgment of the plaintiff's case. The United States Eleventh Circuit Court of Appeals stated in *Holley v. Seminole County School District,* 755 F.2d 1492 (1985), that:

> Where a First Amendment activity is involved, the district court must do a search of its own. When presented with a claim that a faculty member was discharged in retaliation for exercising First Amendment rights, the federal court does not sit simply to review administrative findings or to measure the procedural regularity of the process.

The Eleventh Circuit noted that because Section 1983 vests original, not appellate, jurisdiction in the district court, deference to the administrative record and fact-finding is inappropriate when the claim is that an unconstitutional result could be reached despite procedural regularity and substantial evidence to support the board's conclusion. The *Holly* Court ultimately decided that a discharged or non-renewed teacher asserting a claim of First Amendment rights in certain cases is entitled to a *de novo* hearing in federal court regardless of whether that teacher resorted to an administrative hearing or whether such hearing purported to decide the constitutional issue. The Court found that the policy enunciated by Section 1983 investing original jurisdiction for constitutional claims in a district court requires no less an opportunity to be heard.

Still further, the *Holly* Court stated that "without a searching inquiry into motives, those intent on punishing the exercise of constitutional rights could easily mask their behavior behind a complex web of *post-hoc* rationalizations...the district court fact-finder should have been permitted to assess the board's motivation based upon a full record."

Cleveland Riser, Jr., because of the decision of the trial court and its affirmation by the Court of Appeals, has never been afforded the opportunity to develope a full record and have a United States District Court apply the applicable tests necessary to determine whether Riser's First Amendment rights and further statutory rights have been breached by the actions of the LaSalle Parish School Board.

In *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), the United States Supreme Court found that a trial court must apply a three-pronged test that includes the following in the instant circumstances:

1.) A determination of whether the plaintiff's activity was indeed protected by the First Amendment;
2.) After establishing that the activity was protected, the plaintiff has the initial burden of proving that the conduct was a substantial or motivating factor in the state employer's decision to take adverse employment action against the plaintiff;
3.) And after having done so, the burden shifts to the employer to show by a preponderance of the evidence that the same employment decision would have been rendered absent the protected conduct.

See also: *Paschal v. Florida Public Employment Relations Commission,* 666 F.2d 1381, at 1384 (11th Cir.) cert. denied, 457 U.S. 1109, 102 S.Ct. 2911, 73 L.Ed.2d 1319 (1982).

In differing with the United States Fifth Circuit Court of Appeals action in the instant case, the United States Eighth Circuit Court of Appeals in *Williams v. Day,* 553 F.2d 1160 (1977), found that a district court did not err in considering all of the evidence adduced through trial, including the transcript of a school board hearing, in reaching its decision. The appellant argued that the district court, in ruling on a civil rights complaint, should have confined itself to a review of the evidence presented at the hearing before the school board only. In almost the identical circumstances as the case of Cleveland Riser, Jr., the appellant asserted that because a prior hearing had been held under state law (which would be comparable to the June 1983 hearing of the LaSalle Parish School Board), the district court's role in this Section 1983 case should have been reduced to that of a court reviewing administrative action. In denouncing this position, the Eleventh Circuit Court of Appeals stated:

> No support exists for so restricting a federal district court's function in a case such as this one. While the appellant was free to make the tactical choice of presenting his case-in-chief, except for evidence as to damages, by way of the hearing transcript, this decision in no way barred the introduction of relevant evidence by the defendants.

The distinction between this case and the *Riser* case is that the trial court did bar the introduction of relevant evidence sought to be introduced by Cleveland Riser, Jr.. The only substantial evidence that was allowed by the trial court was the record of the LaSalle Parish School Board transcript. This made the findings of the school board hearing relatively absolute, and denied Riser the opportunity to rebut the events of the school board hearing.

In *Williams v. Anderson,* 562 F.2d 1081 (1977), the United States Eighth Circuirt Of Appeals stated:

> The opinions recognize that admission of discriminatory intent is unlikely, and that intent will ordinarily have to be found by a sensitive inquiry into such circumstantial and direct evidence of intent as may be available, including the impact of the challenged official action, its historical background, and its legislative or administrative history.

In commenting by footnote on the historical background investigation, the court stated:

> Proof that the defendants engaged in racially discriminatory practices and policies prior to the period of time for which relief is available under the statute of limitations is relevant since it creates the inference that the discrimination continued, particularly when there has been little change in the decision-making process.

In excluding a majority of the Riser's witnesses at the January 7, 1987 trial, the trial court prevented the plaintiff from presenting to the court evidence document-

ing a past history of racial discrimination in LaSalle Parish. This factor alone is contrary to civil rights jurisprudence which maintains that proof of an immediate past history of racial discrimination is alone sufficient to shift to the local board of education the burden of justifying its employment decisions by clear and convincing evidence. See: *Lee v. Conecuh County Board of Education,* 634 F.2d 959 (1981), and *Lee v. Washington County Board of Education,* 625 F.2d 235 (5th Cir. 1980). See also: *International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 97 S.Ct. 1943, 52 L.Ed.2d 396 (1977); *Arlington Heights v. Metro Housing Corp.,* 429 U.S. 252, 97 S.Ct. 555, L.Ed.2d 450 (1977); *Washington v. Davis,* 426 U.S. 229, 96 S.Ct. 240, 48 L.Ed.2d 597 (1976).

The trier of fact in the *Riser* case cannot avoid judicial notice of the successes of Cleveland Riser, Jr. prior to 1983 in challenging the discriminatory practices of the LaSalle Parish School Board. In the instant lawsuit, Riser alleges that the action taken against him at the June, 1983, hearing was in retaliation for those previous activities and successes. In relating these circumstances to previous cases with similar circumstances, one may look to the findings of the United States Third Circuit Court of Appeal as enunciated in *Johnson v. Lincoln University of Commonwealth System of Higher Education,* 776 F.2d 443 (1985). Therein, the district court erred in confining itself to some of the charges brought before the review committee when the plaintiff's grievance was much more extensive, including many activities which were not contained in the formal charges brought by the committee against the plaintiff. In *Johnson,* the plaintiff alleged not only that his activities were protected by the First Amendment, but also that the termination proceedings held against him were initiated in order to retaliate against him for the exercise of his right to free speech.

The court agreed that the proper test to apply in such a Section 1983 action would be the *Mt. Healthy* (supra) three-pronged process. This process requires the examination of a public employee's claim of retaliation for engaging in a protected activity such as free speech. However, because of the decision of the trial court and the affirmation coming from the Court of Appeals, Cleveland Riser, Jr. was not afforded the opportunity to present evidence that would have demanded the application of the *Mt. Healthy* test. Riser's previous vocal activities in promoting desegreation of LaSalle Parish Schools was clearly a protected activity under the First Amendment of the United States Constitution. Riser could further demonstrate that his protected activities were substantial or motivating factors in the action taken against him by the LaSalle Parish School Board; this is especially true because of the threat Riser posed as a potential, upcoming Superintendent of Schools for LaSalle Parish. Finally, Riser maintains that the school board would not have been able to overcome the last step of this three-pronged test by showing that it would have terminated Riser even though he had not participated in the desegration action against the school board.

By denying Riser the opportunity to present additional evidence, the trial court failed to afford Riser the protection guaranteed him by the First and Fourteenth Amendments of the United States Constitution. The courts' actions have made the LaSalle Parish School Board immune from the enunciated tests which are now an integral, indispensable part of present-day civil rights litigation. As previously stated, the June, 1983, hearing was not designed to, nor did it afford Cleveland Riser, Jr. the opportunity to air any allegations of racial discrimination or deprivation of constitutional rights, privileges, and immunities.

The Honorable Trial Court, in its reasons for

judgment, has also not effectively disposed of the fact that it never addressed the primary issues contained in Riser's original complaint. Instead, the court reiterates the findings of the LaSalle Parish School Board hearing of June, 1983. In affirming the findings of the trial court, the Honorable Court of Appeals has also erred in not recognizing that Cleveland Riser, Jr. has not been afforded the opportunity to litigate the charges contained in the original complaint which forms the basis of this lawsuit.

According to contemporary civil rights jurisprudence, these findings of the trial court and the Court of Appeals neither afford Cleveland Riser, Jr. the equal protection or the due process of law afforded him pursuant to the statutes and Constitution of the United States. It is therefore necessary that this Supreme Court review the actions and inactions of the trial court and the decisions of the Court of Appeals and that such review be conducted in light of the cases cited herein with other contemporary civil rights jurisprudence. In so doing, the errors of the lower courts can be distinguished and corrected through the application of the properly applicable case and statutory laws. Only by such action will Cleveland Riser, Jr. come to know and enjoy the full protection and process afforded him under the laws of the United States.

CONCLUSION

For the reasons and case law stated herein, petitioner requests that the Supreme Court of the United States grant him writ of certiorari and render a decision on the issues of this case.

Respectfully submitted,

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By _____

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

CLEVELAND RISER, JR.

VERSUS CIVIL ACTION NO. 83-2237

LASALLE PARISH SCHOOL BOARD, ET AL

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Cleveland Riser, Jr., a resident of the Parish of LaSalle, State of Louisiana, who was and now is a duly qualified employee in the public schools of the State of Louisiana, as supervisor of Auxilliary Programs for the LaSalle Parish School Board.

2.

The defendants herein are as follows:

(a) LaSalle Parish School Board, a duly organized school board in the parish of LaSalle, and being a body corporate under the laws of the State of Louisiana;

(b) Edgar J. Bass, Superintendent of Schools for LaSalle Parish;

(c) Individual Board Members of the LaSalle Parish School Board as follows:

W.O. Poole, Bill Hester, Robert Ponds, Shelby Norris, Harland Morgan, W.B. McCartney, Robert Day, J.D. Frazier and Ira Ganey.

3.

All individual defendants are residents of the State of Louisiana.

4.

Jurisdiction herein is based upon 28 U.S.C.A., Section 1331, 42 U.S.C.A., Section 1981, and 42 U.S.C.A., Section 1983, as well as pendent jurisdiction over any State claims alleged herein.

5.

On June 3, 1983, through the recommendation and efforts of Edgar J. Bass, Superintendent of Schools, and upon the unanimous vote of each individual School Board Member listed above, the LaSalle Parish School Board did terminate the employment of Cleveland Riser, Jr.

6.

The termination of Cleveland Riser, Jr. by the LaSalle Parish School Board, and through the efforts of its individual members and the Superintendent of Schools under color of State law, being more particularly Louisiana Revised Statute 17:442, was in violation to the guaranteed civil rights of Cleveland Riser, Jr. in the following particulars:

(a) The First Amendment rights guaranteed by the Constitution of these United States to Cleveland Riser, Jr. were violated in that Cleveland Riser, Jr. did criticize and was and is instrumental in the redistricting action brought by the United States of America against the LaSalle Parish School Board, which exercise of plaintiff's free speech in criticizing the Board and bringing attention to their redistricting practices in violation of the Constitution of the United States, was a part of the motivation of the School Board and the individual defendants herein in seeking the plaintiff's dismissal;

(b) Cleveland Riser, Jr., in exercising his First Amendment rights of freedom of speech and his

rights guaranteed by the United States Constitution Amendment 14 did charge the LaSalle Parish School Board in Civil Action No. 79-0761, United States District Court, Western District of Louisiana, Alexandria Division, with violation of his civil rights and discrimination in failing to hire complainant as Assistant Superintendent of Schools of LaSalle Parish School Board and that the termination referred to above was partially motivated by the defendants herein seeking to silence Cleveland Riser, Jr. and seeking to circumvent his being placed in that position as well as out of fear that Cleveland Riser, Jr. may become the Superintendent of Schools for the LaSalle Parish School system.

(c) The defendants did violate 42 U.S.C.A., Section 1983 in that under color of State law defendants actively participated in and sought the dismissal of Cleveland Riser, Jr. because complainant was of the Negro race, because complainant had criticized the LaSalle Parish School Board, its members and employees in the exercise of his First Amendment rights, because the complainant had exercised his right to sue the LaSalle Parish School Board to be employed as the Assistant Superintendent of Schools, and because the defendants feared that Cleveland Riser, Jr. would become the Superintendent of Schools of said Parish School Board System.

(d) Cleveland Riser, Jr. was terminated from his employment in violation of 42 U.S.C.A., Section 1981 because complainant is a Negro; and, that had the plaintiff been a white citizen said section would not have been taken by the defendants.

(e) Edgar J. Bass did specifically, in violation of Louisiana Revised Statute 17:443, publish

charges and evidence of alleged sexual harrassment against Cleveland Riser, Jr. as reported in the Alexandria Daily Town Talk in violation of Cleveland Riser, Jr.'s request that the hearing be conducted privately.

(f) Cleveland Riser, Jr. was denied equal protection and due process of law in violation of the 14th Amendment to the United States Constitution in that the hearing before the board was a sham because of the bias of its members, insufficient time to prepare for the proceeding, procedural misconduct of the hearing and the decision to terminate was made before the hearing.

7.

At all times pertinent herein complainant has been a good employee and has performed all of the duties of his employment with the LaSalle Parish School Board in accordance with the requirements of his office and that all of the alleged allegations of "willful neglect of duty, incompetency, and dishonesty" are totally without basis, false and slanderous, which charges were brought solely for the purpose of dismissing Cleveland Riser, Jr. from his employment with the LaSalle Parish School Board in an attempt to circumvent previous orders of the United States District Court, Western District of Louisiana, Alexandria Division.

8.

Under the pendent jurisdiction of this Court, Cleveland Riser, Jr. appeals the action of the School Board on June 3, 1983 dismissing him as an action taken in violation of Louisiana Revised Statute 17:443 as well as for the other reasons previously set out herein.

9.

Cleveland Riser, Jr., under Louisiana State law, specifically Louisiana Revised Statute 17:443, has the right to appeal the action of the School Board to "a Court of competent jurisdiction for a full hearing to review the action of the School Board, and the Court shall have jurisdiction to affirm or reverse the action of the School Board in the matter."

10.

Complainant, Cleveland Riser, Jr., has been severely injured and personally damaged by the actions of the defendants herein in the following particulars:

(1)	Psychological distress due to the deprivation of Constitutional rights	$1,500,000.00
(2)	Embarrassment, humiliation and emotional distress	$2,500,000.00
(3)	Loss of wages, past, present and future	$1,500,000.00
(4)	Punitive damages	$2,000,000.00
(5)	Attorney's fees	$ 50,000.00
Total Damages		$6,550,000.00

11.

Complainant is entitled to a judgment declaring that the termination by the LaSalle Parish School Board is in violation of the rights and privileges guaranteed by the Constitution of the United States and the Act of Congress of the United States previously cited herein and thus should be granted an injunction against the LaSalle Parish School Board and the Superintendent of Schools of the LaSalle Parish School Board reversing the termination of Cleveland Riser, Jr. and ordering him reinstated in

his previous position with full benefits, including but not limited to retirement, back pay and tenure.

WHEREFORE, COMPLAINANT, CLEVELAND RISER, JR., PRAYS that after due proceedings had, judgment be rendered in his favor against the defendants, individually, jointly and in solido, in the full sum of SIX MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 ($6,550,000.00) DOLLARS, as restitution for the items of damage alleged in the complaint set out above, as well as for a judgment declaring the termination of complainant to be in violation of law and ordering the reinstatement of Cleveland Riser, Jr. with full benefits, past, present and future, that are attendant to said position as well as enjoining the defendants from in any way seeking to terminate complainant from said position or taking any action in furtherance of the illegal desire to terminate complainant from his employment with the LaSalle Parish School Board as well as assessing defendants with all costs of these proceedings.

BOLEN & ERWIN, LTD.
A PROFESSIONAL LAW CORPORATION

By /s/ James D. Kirk
James D. Kirk

By /s/ Gregory S. Erwin
Gregory S. Erwin

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ATTORNEYS FOR COMPLAINANT,
CLEVELAND RISER, JR.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CIVIL ACTION
NO. 83-2237

CLEVELAND RISER, JR.

versus

LASALLE PARISH SCHOOL BOARD, ET AL

FOR PLAINTIFF:

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NAUMAN S. SCOTT
SENIOR UNITED STATES DISTRICT JUDGE

OPINION

On September 22, 1983, plaintiff filed the instant action, alleging that the termination of employment by the School Board on June 3, 1983 violated the First and Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1981, *et seq.* Plaintiff alleged that he was terminated because he was black, because he participated in a re-districting action filed by the United States, and because of a prior lawsuit, Civil Action No. 79-0761, wherein we held that Cleveland Riser, Jr. was unfairly denied the opportunity of appointment as Assistant Superintendent of the LaSalle Parish School Board.

Plaintiff also pleaded a State law claim under the Teacher Tenure Act (La. R.S. 17:443, *et seq.*), which was dismissed by this court on July 25, 1984, and affirmed by the Fifth Circuit Court of Appeals. *Riser v. LaSalle Parish School Board,* No. 84-4726, Slip Op. at p. 2-3 (May 9, 1985).

In October 1984, long after plaintiff brought the instant action, plaintiff filed a State court suit. *Riser v. LaSalle Parish School Bd.,* No. 20,579 (28th Jud. D. Ct., Sept. 12, 1985). The defendant excepted because the one year period for appeal had passed. Before argument thereon, the State court dismissed the suit without prejudice.

The defendants filed a Motion for Summary Judgment based upon the case of *University of Tennessee v. Elliot,* 106 S.Ct. 3220 (1986), which we denied.

The matter was tried before this court on January 8, 1986 [SIC] to determine whether the termination of Mr. Riser was discriminatory and in violation of 42 U.S.C. §§ 1981 and 1983.

FINDINGS OF FACT

1. Plaintiff, Cleveland Riser, Jr., was supervisor of

Auxiliary Programs for LaSalle Parish School Board until he was discharged from employment on June 3, 1983. As such, he was in charge of the General Equivalency Degree (hereinafter GED), Program, and students therein.

2. On or about May 3, 1983, plaintiff was served with written charges of willful neglect of duty, incompetency, and dishonesty, based on seven separate instances of sexual harassment.

3. The seven complaints of sexual harassment were listed in the notice of written charges, with a brief description of the offensive conduct, as well as the names of each complaining witness, all female students enrolled under plaintiff's supervision in the LaSalle Parish School Board's adult education program.

4. A hearing on the foregoing charges was held by the LaSalle Parish School Board on June 2 and 3, 1983, at which the School Board and the plaintiff were each represented by counsel. Witnesses were examined and cross-examined, arguments were made by both parties. The School Board unanimously found plaintiff guilty of seven charges of sexual harassment, and that each separate charge constituted separate grounds for discharge under La. R.S. § 17:443.

5. We admitted the transcript from the School Board hearing on June 2 and 3 of 1983 into evidence by joint offer of plaintiff and defense counsel.*

6. At the School Board hearing on June 2 and 3, 1983, counsel for Mr. Riser cross-examined all complainants and produced nineteen witnesses on behalf of Mr. Riser. Only one of those witnesses, Mr. Chester Floyd, had

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* The plaintiff was *not* permitted to call eight witnesses that testified at the School Board hearing below. Both counsel stipulated that each of the eight witnesses would have given substantially the same testimony as that contained in the School Board hearing transcript.

any direct testimony concerning the alleged improper motives of or conspiracy by members of the School Board in terminating Mr. Riser. Mr. Floyd testified that Bass stated:

> "Well, we, we dina got off of this hard part a little bit and, talking and he just lent over his deak right right toward me and he just kinda shut up his hand and lent over and said: Chester, said: *I want to tell you the whole damn thing in a nutshell; he said: Dr. Riser — no, if we lose this case, he was a-bumping on his desk, said: If we lose this suit and Dr. Riser is going to be your superintendent and said: we're just not going to have it. Said: we're not going to stand for it.* That's — with his hands sitting on the desk and bumping it a little bit. That was our parting words right there. Only, be good and..." (See Hearing of June 3, 1983, Tr. P. 63, L. 17.)

However, both Mr. Bass and Mr. Coleman testified that Mr. Bass denied making the statement. Furthermore, the remaining substance of Mr. Floyd's recollection of his conversation with Mr. Bass supports defendant's contention that the charges were brought in good faith. Other than the testimony of Mr. Floyd, there was no direct evidence to support plaintiff's averments that there was a conspiracy of race discrimination or of retaliatory action by the School Board because of plaintiff's prior action against the Board in 1979. Furthermore Bass was not a member of the Board; he was the superintendent and there is nothing in his statement that alleges that any member of the Board or any complaining witness had, individually or in concert with each other, engaged in any act of conspiracy.

7. At the trial of this matter on January 8, 1987 in Alexandria, Louisiana in this court, the plaintiff

produced no new evidence to support averments of race discrimination or of a conspiracy to retaliate against the plaintiff.

CONCLUSIONS OF LAW

1. We have jurisdiction over this cause. 42 U.S.C. § 1981.

2. We do not hear this matter as a court of appeal. Louisiana statutes, La. R.S. 17:443, provide an orderly process for appeal, but plaintiff failed timely to avail himself of that appeal. If, in fact, he received due process in defense of the charges brought against him, then his rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1981 and 1983 have not been violated and he can take nothing by this suit.

3. We conclude that plaintiff was accorded an "adequate opportunity to litigate" any issues which he desired at the School Board hearing on June 2 and 3, 1983. "When a State agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, Federal courts in actions under the Reconstruction Civil Rights Statutes must give the agency's fact finding the same preclusive effect to which it would be entitled in the State's courts." *University of Tennessee, et al v. Elliot,* 106 S.Ct. 3220, 3222 (1986).

3. The Louisiana Supreme Court requires that the School Board decision be supported by "substantial evidence." *Lewing v. DeSoto Parish School Board,* 238 La. 43, 113 So.2d 462, 466 (1959). The direct testimony at the LaSalle Parish School Board hearing by the seven women who claimed to have been sexually harassed constituted substantial evidence for the Board's decision to terminate plaintiff for "willful neglect of duty, incompetency and

dishonesty." In *Phillips v. Plaquemines Parish School Board,* 465 So.2d 53, 55 (La.App. 4th Cir. 1985), *cert. denied,* 467 So.2d 540 (1985), one instance of sexual harassment by a tenured teacher was held to be a "substantial basis for the Board's finding of incompetency." *See also, Jones v. Jefferson Parish School Board,* 533 F. Supp. 816, 822 (E.D. La. 1982), *aff'd.* 688 F.2d 837 (5th Cir. 1982).

5. As stated in Paragraph 6 under our findings of fact, there was no direct evidence that any School Board member or complaining witness somehow participated in a conspiracy to retaliate or discriminate against the plaintiff, Cleveland Riser, Jr. Superintendent Bass' statement as understood by Mr. Floyd is, if true, a declaration of prejudice on the part of Bass, but mentions no School Board member, none of the complaining witnesses against Riser; it fails to mentioin conspiracy, allege the membership in any such conspiracy or any act done in furtherance of the object of the conspiracy. It fails to suggest or account for the means used to induce each of the complaining student witnesses to commit perjury and testify falsely in the School Board hearing. This accusation cannot find foundation and validity in the unsupported assertion of the plaintiff. Therefore, we find that plaintiff was accorded a fair hearing, with full due process guarantees being accorded by the School Board on June 2 and 3, 1983. The Board complied with all statutory guidelines. And, plaintiff was represented by counsel, allowed to cross-examine the witnesses on behalf of the Board, and also allowed to present nineteen witnesses on his own behalf.

6. Consequently, based upon our review of the evidence adduced at the June 2 and 3, 1983 hearing, as well as the evidence produced at the trial of this matter on January 8, 1986, we find that defendants had a legitimate and just cause for terminating plaintiff's employment.

7. Furthermore, plaintiff has failed to establish by a preponderance of the evidence that the School Board's decision to terminate employment of plaintiff on June 4, 1983 was premised upon an underylying motive of discrimination or retaliation because of plaintiff's race and/or exercise of constitutional or statutory rights.

We therefore find judgment in favor of the defendant and dismiss plaintiff's claims.

DONE AND SIGNED at Alexandria, Louisiana, this third day of February, 1987.

/s/ Nauman S. Scott

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CLEVELAND RISER, JR.	:	
— vs —	:	CIVIL ACTION NO. 83-2237
LASALLE PARISH SCHOOL BOARD, ET AL	:	

J U D G M E N T

This matter having come on for hearing, hearing having been had and evidence adduced; the law and evidence being in favor of the defendant, for written reasons this day assigned, it is

ORDERED, ADJUDGED AND DECREED that there be judgment herein favor of the defendants, LaSalle Parish School Board, Edgar J. Bass, the individual members of the LaSalle Parish School Board: W.O. Poole, Bill Hester, Robert Ponds, Shelby Norris, Harlan Morgan, W.V. McCartney, Robert Day, J.D. Frazier, and Ira Ganey, and against plaintiff, Cleveland Riser, Jr., all at plaintiff's cost.

Alexandria, Louisiana this third day of February, 1987.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4098
Summary Calendar

CLEVELAND RISER, JR.,

Plaintiff-Appellant,

versus

LASALLE PARISH SCHOOL BOARD,
ET AL.,

Defendant's Appelles.

Appeal from the United States District Court for the
Western District of Louisiana
(CA 83-2237 A)

(JULY 23, 1987)

Before REAVLEY, RANDALL and JOLLY, Circuit Judges.

REAVLEY, Circuit Judge:*

Cleveland Riser appeals the district court's judgment in favor of LaSalle Parish School Board in his action against it under 42 U.S.C. § 1981. Riser alleged that the school board terminated his employment because he is

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

black and because he had previously participated in legal action against the school board. His challenge in this appeal centers on the fact that the district court would not allow live testimony by witnesses who had previously testified at the school board's termination hearing. We affirm.

Riser was employed by the school board as Supervisor of Auxiliary Programs, in charge of the General Equivalency Degree Program, when he was served with written charges of willful neglect of duty, incompetency, and dishonesty. The charges were based on seven separate complaints of sexual harassment of female students enrolled in the adult education program that Riser supervised. On June 2 and 3, 1983, a hearing was held, at which the seven students testified, and at which both Riser and the board were represented by counsel. The board unanimously found Riser guilty of the seven charges of sexual harassment, and found that each separate charge is a sufficient ground for discharge under Louisiana law. La. Rev. Stat. Ann. § 17:443.

Riser then filed the instant action in federal district court. The judge admitted into evidence the transcript of the school board hearing, but refused to allow the same witnesses to testify again. He noted that Riser had called eight reputation witnesses at the hearing, and that he (Judge Scott) would normally allow a party to call only three such witnesses. The judge allowed a stipulation that the character witnesses' testimony would be the same as in the school board proceeding.

Prior t the instant action, Riser participated in a redistricting action filed by the United States against the school board, and he also litigated a case in which Judge Scott held that Riser was unfairly denied the opportunity to become Assistant Superintendent of the LaSalle Parish School Board. Riser now maintains that his dismissal is in violation of his rights under the First and Fourteenth

Amendments to the United States Constitution, as well as the Civil Rights statutes, 42 U.S.C. §§ 1981, 1983.

In *Mt. Healthy City School District v. Doyle,* 429 U.S. 274, 287, 97 S.Ct. 568, 576, 50 L.Ed.2d 471 (1977), the Supreme Court, in dealing with a case similar to the instant one, stated:

> Initially, in this case, the burden was properly placed upon respondent to show that his conduct was constitutionally protected, and that this conduct was a "substantial factor" — or to put it in other words, that it was a "motivating factor" in the Board's decision not to rehire him. Respondent having carried that burden, however, the District Court should have gone on to determine whether the Board had shown by a preponderance of the evidence that it would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct.

Riser's prior criticisms of the school board do constitute protected conduct. The difficulty with his position, however, is that he has presented no evidence to show that this conduct was casually related to the termination. Moreover, even if Riser had met the initial burden of proving the board's decision was motivated substantially by the protected conduct, under the evidence the board would have been justified in terminating him. If the allegations of seven instances of sexual harassment of students are true, this is an overwhelming reason to believe that the board "would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct." *Doyle,* 429 U.S. at 287, 97 S.Ct. at 576. In *Phillips v. Plaquemines Parish School Board,* 465 S.2d 53 (La. App. 4th Cir.), *cert. denied,* 467 So.2d 540 (1985), a former tenured principal alleged neither that he was black nor that he had engaged in constitutionally protected conduct. Neverthe-

less, the Louisiana appeals court affirmed the school board's harassment. There is every reason to believe that other school boards should act likewise.
other school boards should act likewise.

Riser's contention that he did not have an opportunity to fully litigate his claim is also without merit. The district judge game him an opportunity to present evidence not presented at the school board hearing. Four of the complaining witnesses were present at the federal district court trial pursuant to a subpeona. Riser was offered the opportunity to cross-examine them, yet he chose not to do so. The judge was highly familiar with Riser's prior protected conduct, having been the same judge to find in Riser's favor in a prior lawsuit against the board. The only excluded testimony was that which would have been repetitious. Riser's appeal is without merit.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 87-4098

CLEVELAND RISER, JR.,

Plaintiff-Appellant,

versus

LASALLE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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ON PETITION FOR REHEARING

(August 31, 1987)

Before REAVLEY, RANDALL and JOLLY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley

UNITED STATES CIRCUIT JUDGE

NO. 87-990

Supreme Court, U.S.
FILED
DEC 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

CLEVELAND RISER, JR.,
Petitioner

versus

LASALLE PARISH SCHOOL BOARD, ET AL.
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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59p

No. 3,050

COUNTER STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether Mr. Riser failed to prove that his discharge by the School Board was "substantially motivated" by racial discrimination in violation of 42 U.S.C. §1981 or §1983 or conduct protected by the First and Fourteenth Amendments to the Constitution of the United States.

II. Whether the School Board was entitled to judgment dismissing Mr. Riser's racial discrimination and Constitutional claims on grounds of issue preclusion under authority of *University of Tennessee v. Elliott*, 106 S. Ct. 3220 (1986).

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NO. 87-990

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CLEVELAND RISER, JR.,
Petitioner

versus

LASALLE PARISH SCHOOL BOARD, ET AL.,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ADDITIONAL CONSTITUTIONAL PROVISIONS AND STATUTES

1) United States Constitution
Amendment XIII:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

2) Louisiana Revised Statute 13:4231:

"The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

COUNTER-STATEMENT OF THE CASE

Cleveland Riser, Jr. ("Mr. Riser:"), then employed by the LaSalle Parish, Louisiana, School System as Assistant Superintendent and Supervisor of Auxiliary Programs, was suspended prior to a LaSalle Parish School Board ("School Board") hearing on charges that he sexually harrassed seven young women who were enrolled in a GED program which operated under his supervision. At the School Board Tenure hearing, held on June 2-3, 1983, which was closed to the public at Mr. Riser's request, seven Adult Education Program female students, assigned to Mr. Riser, testified in detail about the incidents of sexual harassment.

These activities took place in Mr. Riser's office or at the Indian Center while Mr. Riser was performing his official duties.

Mr. Riser denied the charges and asserted defenses that the witnesses and the School Board had conspired against him, in order to punish him for his role in filing suit against the School Board in 1979, and because he is black (Tr. of June 3, 1983, pp. 92-94). The School Board unanimously found Mr. Riser guilty on all charges (Tr. of June 3, 1983, pp. 109-124) and, for these reasons, discharged him from employment (Resp. Appendix, p.15).

Mr. Riser filed the instant suit in the United States District Court for the Western District of Louisiana. So far as is relevant to the Petition in this cause, Mr. Riser alleged that his discharge from employment was substantially motivated by racial discrimination in violation of 42 U.S.C. §1981 and §1983, or because he engaged in conduct protected by the First and Fourteenth Amendments to the Constitution of the United States.

Contrary to the assertions at page 6 of Mr. Riser's Petition, at the Tenure Hearing held by the LaSalle Parish School Board on June 2-3, 1983, Mr. Riser's legal counsel made no contention that Mr. Riser had been deprived of any opportunity to "raise allegations of racial discrimination and deprivation of rights, privileges, and immunities which form the basis of the instant lawsuit". At the Tenure Hearing Mr. Riser's legal counsel dwelled on precisely those issues in his final arguments (Tr. of June 3, 1983, pp. 92-94). Mr. Riser's attorney was allowed substantial latitude to cross-examine the LaSalle Parish Superintendent of Schools on the question of motive. (Tr. of June 2, 1983, pp. 179-188; 194-195; 211-213).

Further, witness Chester Floyd testified in support of Mr. Riser's allegations of racial discrimination and deprivation of his Constitutional rights (Tr. of June 3, 1983, pp. 45-71, esp. at 59-64).

Mr. Riser testified at length at the Tenure Hearing (Tr. of June 2, 1983, pp. 16-44; June 3, 1983, pp. 72-83). At no time was Mr. Riser's counsel deterred from asking any questions on any subject.

The evidence and witnesses presented at the Tenure Hearing were not "confined strictly to the charges of sexual harassment".

Immediately prior to trial of this cause on the merits on January 7, 1987, the District Court held a Pre-Trial Conference at which he ruled that there was no need to call any witness whose testimony would merely duplicate the testimony previously given at the Tenure Hearing (District Court Tr.3-6). Based on this ruling, Mr. Riser's trial counsel voluntarily dismissed eight of his witnesses, all of whom had testified at the Tenure Hearing (District Court Tr. 8-9).

Trial counsel for Petitioner and for the School Board "stipulated that each of the eight witnesses would have given substantially the same testimony as that contained in the School Board hearing transcript" (Petitioner's Appendix, p. 27n.). "[P]laintiff produced no new evidence to support averments of race discrimination or of a conspiracy to retaliate against the plaintiff" (Petitioner's Appendix, pp. 28-29). The only witnesses called by Petitioner's counsel were Petitioner and his wife. Petitioner was given every opportunity to present new evidence; none was presented.

Contrary to Petitioner's assertions at page 7 of his Petition, the trial court never refused to allow him to present witnesses, save for those witnesses whose testimony would have replicated what those same witnesses had stated at the Tenure Hearing.

At no time did the district court limit the receipt of testimony and evidence from which petitioner might have substantiated his allegations of racial discrimination and deprivation of Constitutional rights.

Further, the School Board introduced testimony of two School Board members as to the basis of the determination and decision of the School Board following the Tenure Hearing. Each testified that neither Mr. Riser's prior activities in successfully suing the School Board nor

his race played any part in the determination to terminate his employment (District Court Tr. 60-62, 68-70). The School Board further offered each and every remaining School Board member if Mr. Riser's counsel "wants any of them on cross-examination" (District Court Tr. 75). Moreover, four of the seven complaining women who testified at the Tenure Hearing were made available to testify in the district court under cross-examination of Mr. Riser's counsel (District Court Tr. 4).

Mr. Riser's counsel declined to call any of these School Board members or complainants in an effort to establish the truth of the allegations in his Complaint.

SUMMARY OF ARGUMENT

The district court's pretrial ruling admitting the Tenure Hearing transcript into evidence and disallowing duplicative testimony given at the Tenure Hearing was correct. *University of Tennessee v. Elliott,* 106 S. Ct. 3220 (1986); *Hodges v. United States,* 597 F.2d 1014 (5th Cir. 1979).

Although Mr. Riser was given every opportunity, he failed to put forth any credible evidence that his race or Constitutionally protected First or Fourteenth Amendment activity was a substantial and motivating factor in the School Board's decision to terminate his employment, and, therefore, he failed to meet his burden under *Mt. Healthy School Dist. v. Doyle,* 429 U.S. 274 (1977). As the court below held:

> "Riser's prior criticisms of the school board do constitute protected conduct. The difficulty with his position, however, is that he has presented no evidence to show that his conduct was causally related to the termination. Moreover, even if

Riser had met the initial burden of proving the board's decision was motivated substantially by the protected conduct, under the evidence the board would have been justified in terminating him. If the allegations of seven instances of sexual harassment of students are true, this is an overwhelming reason to believe that the board 'would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct.' *Doyle*, 429 U.S. at 287, 97 S. Ct. at 576. In *Phillips v. Plaquemines Parish School Board*, 465 So. 2d 53 (La. App. 4th Cir.), *cert. denied*, 467 So. 2d 540 (1985), a former tenured principal alleged neither that he was black nor that he had engages in constitutionally protected conduct. Nevertheless, the Louisiana appeals court affirmed the school board's decision to terminate him based on one incident of sexual harassment. There is every reason to believe that other school boards should act likewise.

"Riser's contention that he did not have an opportunity to fully litigate his claim is also without merit. The district judge gave him an opportunity to present evidence not presented at the school board hearing. Four of the complaining witnesses were present at the federal district court trial pursuant to a subpoena. Riser was offered the opportunity to cross-examine them, yet he chose not to do so. The judge was highly familiar with Riser's prior protected conduct, having been the same judge to find in Riser's favor in a prior lawsuit against the board. The only excluded testimony was that which would have been repetitious. Riser's appeal is without merit."[1]

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[1] The text of the Decision of the Court of Appeals, as reproduced in the appendix to the Petition (p. 36), has been inadvertently garbled (Petitioner's App. p. 36).

ARGUMENT

I - *No Proof of Discrimination*

At the pretrial conference, the district court admitted the transcript of the School Board hearing into evidence and ruled that there was no need to call any witnesses whose testiomony would merely duplicate previous testimony at the School Board hearing. (District Court Tr. 3-6). This pretrial ruling was incorporated into the pretrial order.

The district court also properly restricted to a reasonable number the group of witnesses who had been called to testify as to Mr. Riser's reputation.

The district court's pretrial ruling is not unjust. The parties were treated equally. No party was denied the opportunity to present new testimony or new evidence or argue an issue.

Contrary to the claim in his Petition (p. 11), Mr. Riser received a full *de novo* trial on the merits in district court. The transcript of the School Board hearing was offered into evidence by the parties and reviewed by the Court. The parties were given the opportunity to present evidence not contained in the transcript. Mr. Riser did not produce any new evidence at trial. Mr. Riser's inability or failure to produce new evidence does not indicate a lack of opportunity to produce it. The district court did not merely review the regularity of the Tenure hearing. It tried the issues *de novo* on January 7, 1987, using the evidence adduced at the Tenure Hearing as evidence in the cause which it tried.

Mr. Riser argues that the district court should have allowed witnesses to testify regarding the history of racial discrimination in the LaSalle Parish School system. First

there is no indication in the trial transcript that such non-duplicative testimony would have been excluded. The only opportunities denied to Mr. Riser's counsel were the opportunities to replicate testimony already admitted into evidence and to introduce repetitious reputation evidence. (District Court Tr. 5). Second, this testimony was in evidence through the School Board hearing transcript. (Floyd testimony, Tr. of June 3, 1983, pp. 45-71; Attorney argument, Tr. of June 3, 1983, pp. 92-94). Third, counsel "stipulated that each of the eight witnesses [who were not permitted to testify] would have given substantially the same testimony as that contained in the School Board transcript" (Petitioner's Appendix p. 27n). Finally, as the Court of Appeals stated, "The judge was highly familiar with Riser's prior protected conduct, having been the same judge to find in Riser's favor in a prior lawsuit against the board. The only excluded testimony was that which would have been repetitious, Riser's appeal is without merit." (Petitioner's Appendix, p. 36).

The district court was fully aware of all aspects of Mr. Riser's previously decided Civil Rights action. Judge Scott had decided that cause in Mr. Riser's favor, and it was his opinion which the Fifth Circuit affirmed on October 18, 1983. (Docket, 5th Cir. 83-4183).

There is no merit to the assertion in Mr. Riser's Petition (p. 11) to this Court that on trial in the district court in this cause, he was denied the right to litigate his "discrimination issues." These are "state of mind" issues. The School Board's counsel examined two Board members as to their state of mind when they determined that Mr. Riser's employment should be terminated (District Court Tr. 60-62, 68-70) and tendered the remaining members to Mr. Riser's counsel for cross-examination (District Court Tr. 75).

This Court has articulated minimum evidentiary requirements which can shift the burden of proof onto a defendant school board: the teacher must show that his race or Constitutionally protected conduct was a "substantial factor" or a "motivating factor" in the board's decision not to rehire him. *Mt. Healthy City School Dist. v. Doyle,* 429, U.S. 274, 287 (1977).

Mr. Riser failed to carry this burden. He introduced no evidence of improper motive other than his own speculations, and he was in no way precluded by the rulings of the district court from introducing such evidence.

II - *Claims Precluded By Tenure Hearing*

There is a second and discrete ground for denial by this Court of Mr. Riser's Petition. All of Mr. Riser's claims were precluded by the Tenure Hearing and by his subsequent failure timely to pursue his adequate remedies in the state courts of Louisiana. No evidentiary hearing in the district court was required. *University of Tennessee v. Elliott,* 106 S. Ct. 3220 (1986). *A fortiori,* judgment in favor of the School Board following trial on the merits was mandated by this Court's opinion in the *Elliott* case.

In the *Elliott* case, this Court addressed the issue of whether a decision of a state agency, acting in a judicial capacity, has a preclusive effect on subsequent litigation which raises Reconstruction civil rights statutes and Thirteenth and Fourteenth Amendment claims in federal court. *University of Tennessee v. Elliott,* 106 S. Ct. 3220 (1986); *Accord Abramson v. Council Bluffs Community School Dist.,* 808 F.2d 1307 (8th Cir. 1987). This Court held that it is sound policy to apply principles of issue preclusion to the fact findings of an administrative body acting in a judicial capacity.

In the *Elliott* case, a black petitioner, under notice of discharge, requested and received an administrative hearing. The administrator decided that the proposed disciplinary action was not racially motivated. Instead of seeking administrative review in the Tennessee state court, Petitioner pursued civil rights claims in the federal court.

This Court held that "when a state agency 'acting in a judicial capacity [such as hearing the evidence supporting the dismissal of a state employee] resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate,' federal courts must give the agency's fact-finding the same preclusive effect to which it would be entitled in the State's courts" *Elliott,* 106 S. Ct. 3227 (quoting *United States v. Utah Const. & Min. Co.,* 384 U.S. 394, 422 (1966)). This Court reasoned that:

> [T]he value [of preclusion] encompasses both the parties' interests in avoiding the cost and vexation of repetitive litigation and the public's interest in conserving judicial resources . . . whether the fact-finding is done by a federal or state agency.
>
> Having federal courts give preclusive effect to the factfinding of state administrative tribunals also serves the value of federalism. *Id.* at 3226.

In the case at bar, Mr. Riser received a due process administrative hearing on his termination at which he raised the same factual issues raised in the instant petition. As in the *Elliott* case, Mr. Riser's claims are lodged under 42 U.S.C. §1981 and §1983 and the United States Constitution. In that case this Court concluded that, "Congress, in enacting the Reconstruction civil rights statutes [42 U.S.C. §§1981-5], did not intend to create an exception to the general rules of preclusion" *Elliott,* 106 S. Ct. at 3225.

Mr. Riser was allowed to present as many witnesses as he wanted at the School Board hearing (Tr.of June 3, p. 16-19). Plaintiff's claims of racial discrimination under 42 U.S.C. §1981, and §1983 and of violation of his Constitutional rights were fully ventilated.

Further, the Tenure Hearing transcript established that the School Board's hearing would have been given preclusive effect in Louisiana's courts. A school board's decision is not disturbed when there is "substantial evidence" supporting a rational basis for the decision.[2]

Under the rule and the analysis of the *Elliott* case, this Court should accord to the factual conclusions of the LaSalle Parish School Board, the same preclusive effect to which they would be entitled in the Louisiana courts.

Louisiana employs a three-step test for *res judicata.* "The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality" La. R.S. 13:4231.

Each of these statutory elements required for the application of *res judicata,* has been satisfied by the decision of the School Board.

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[2] The direct testimony at the LaSalle Parish School Board hearing by the seven women who had been sexually harassed by plaintiff constitutes "substantial evidence" as required by the Louisiana Supreme Court in *Lewing v. DeSoto Parish School Board,* 238 La. 43, 113 So. 2d 462, 466 (1959). In *Phillips v. Plaquemines Parish School Board,* 465 So. 2d 53, 55 (La. App. 4th Cir.), *cert. denied,* 467 So. 2d 540 (1985), one instance of sexual harassment by a tenured teacher was held to be "a substantial basis for the board's finding of incompetency" *Accord, Jones v. Jefferson Parish School Board,* 533 F. Supp. 816, 822 (E.D. La.), *aff'd,* 688 F.2d 837 (5th Cir. 1982).

First, the relief demanded is the same. At the School Board hearing, Mr. Riser argued against his termination. In the Complaint (p. 6) in the case at bar, Mr. Riser prays for "a judgment declaring the termination of complainant to be a violation of law".

Second, in both cases the cause is the same. At the School Board hearing, Mr. Riser contended that he was conspired against because of his race and his First Amendment protected conduct. The same allegations are set forth in sections (a), (b), (c), and (d) of par. 6 of the Complaint.

Third, the parties are the same. At the School Board hearing, Mr. Riser attacked Supt. Bass and the entire School Board, both individually and in their official capacities, on conspiracy grounds. In the case at bar, Mr. Riser has sued the School Board, all of its members who participated in the Tenure Hearing, and Supt. Bass.

CONCLUSION

Judge Scott's ruling, limiting testimony at trial to testimony not given at the School Board hearing was not a clear abuse of discretion. Indeed the ruling was correct and does not constitute reversible error.

Mr. Riser did not prove that his race and Constitutionally protected activities were a substantial factor motivating his termination from employment. Mr. Riser did not meet his burden of proof.

The district court's judgment is based on substantial evidence that Mr. Riser sexually harassed seven female students.

Relitigation of Mr. Riser's claims in the district court is precluded. *University of Tennessee v. Elliott,* 106 S. Ct. 3220 (1986).

The petition should be denied.

Respectfully submitted, December 22, 1987.

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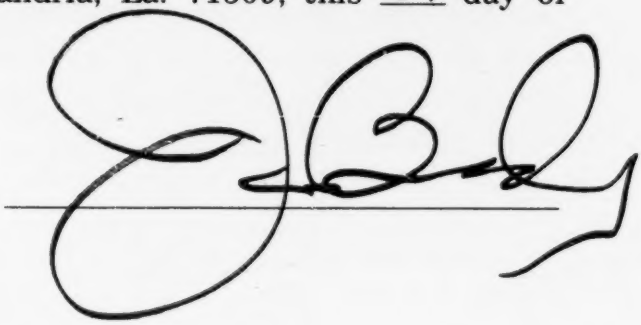
CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Brief in Opposition have been mailed to Gregory S. Erwin, Esq. and Scott Chemino, Esq. of Messrs. Bolen & Erwin, Ltd., P.O. Box 906, Alexandria, La. 71309, this 24th day of December, 1987.



SCHOOL BOARD DETERMINATION, LETTER OF JUNE 3, 1983

LASALLE PARISH SCHOOL BOARD
OFFICE OF SUPERINTENDENT
P. O. DRAWER 90 PHONE 992-2161
JENA, LOUISIANA 71342

June 3, 1983

Mr. Cleveland Riser, Jr.

As Superintendent of the LaSalle Parish School Board, I hereby furnish you with a written statement advising you that the LaSalle Parish School Board has found you guilty of willful neglect of duty, incompentence, and dishonesty on each of the attached charges. The LaSalle Parish School Board has based on the attached charges recommended that you be terminated and removed from your position with the LaSalle Parish School Board, effective this date.

This written statement has been approved by the LaSalle Parish School Board and the exact reasons or offenses or instances are fully contained in the attached charges and the entire record made in the hearing on said charges made before the Board.

/s/ EDGAR J. BASS

Edgar J. Bass, Superintendent
LaSalle Parish School Board

Attachment

CERTIFICATE OF THE SECRETARY

I, Edgar J. Bass, the undersigned Secretary of the LaSalle Parish School Board, hereby certify that the above is a true and correct copy of a letter given to Mr. Cleveland Riser, Jr., on June 3, 1983.

LaSALLE PARISH SCHOOL BOARD HEARING OF JUNE 2, 1983: TESTIMONY OF LaSALLE PARISH SCHOOL SUPERINTENDENT EDGAR BASS, UNDER CROSS-EXAMINATION BY MR. JOHN HONEYCUTT.

Q (179) Now, isn't it true that Mr. Robert Coleman is the assistant Superintendent under you?

A Yes, sir.

Q Doesn't he hold that position when the Federal District Court in Alexandria had awarded that - has awarded to Mr. Riser?

A He still holds the position.

Q Okay. And has not the Federal District Court awarded that position to Mr. Riser?

MR. BRADY: I want to object to the- him going into anything of what the Federal District Court has or has not done. This matter is on Appeal and this matter is just not final. (180)

Q Well, I acknowledge that it is on appeal but I'm entitled to pursue the line of questioning that I want on cross examination.

MR. BRADY: Well, I don't think it is relevant, Mr. President and members of the Board, but he does have a lot of leeway under cross examination. I just don't feel that going into this Federal proceedings is relevant to the matter at all. Mr. Coleman is not on trial here, and not the subject of this hearing. He can - he wants to, maybe, attempt to show various things, but my objection mainly is that if he is going to go into any depth on the Federal proceedings, they are not relevant to this case.

Q I don't intend to go into any depth, but I need to and I am entitled to establish the foundation of the status of that Federal proceeding and the particular position of Assistant Superintendent, because that..

MR. BRADY: You can do that.

A Okay, I don't intend to go any deeper than the fact that the Federal District Court awarded the position to Mr. Riser and the matter is now on appeal.(181)

MR. BRADY: I have no objection to that. That is a correct statement..

MR. NORRIS: That's right.

MR. MCCARTNEY: Could I ask a question in regard to this. I'm not..

Q Yes, sir.

MR. MCCARTNEY: .... I'm not quite clear on this but I understand that the Federal District Court ruled in this case in Mr. Riser's favor, then it was appealed to the Court of Appeals and they sent - they did not necessarily agree with Judge Scott. They sent it back to him for his consideration again. Is that where we are with that thing?

MR. BRADY: And he then made the same decision that he made the first time and it's back on appeal.

MR. NORRIS: All right. We have established that.

MR. BRADY: Is that the way you understand it, Mr. Bass?

A Yes.

Q Mr. Bass, how old are you?(182)

A I'm 64.

Q And you've been the Superintendent since 1979?

A Yes, sir.

Q Isn't it true that you are getting pretty close to retirement?

A Well, that's a relative question, sir. I'm not getting close to retirement age.

Q Well, are you personally getting close to retirement from your position?

A Well, I don't know. I haven't made any decision about retirement.

Q Haven't you told certain friends or acquaintances that you are getting pretty close to retirement?

A I have on occasions.

Q Do you know what would happen to Mr. Coleman's position as Assistant Superintendent if the Appeals Court upholds the Federal Court's decision.

MR. BRADY: At this point I think you have gone too far and I'm going to object that that has no relevancy at all, you know, to these proceedings.

MR. NORRIS: I understand. We are getting on other avenues and I object.

MR. POOLE: We aren't talking about what's happening in the future. We are (183) talking about

what's happening now. For the record, in order to show the reason for what is happening now, I'm trying to lay the foundation for why these things are happening. The underlying motive for these things. I think I'm entitled to pursue these lines of questioning particularly on cross examination. It's not, as your attorney has advised, it's not to be as strictly construed against me as Mr. Riser's attorney as it would be under direct examination.

MR. BRADY: My objection is on two things. That it's going - that is is not relevant to this proceeding, and secondly that it is speculative, and plus I don't think - it is calling for an opinion from Mr. Bass that he is just not in a position to give. What is going to happen if he retires is up to this Board or another Board or a future Board or anything. It's just too speculatively and it's not at all relevant to these proceedings.

Q It is relevant to the proceedings in that we have an opportunity and a right to show, if we can, whatever the underlying motive for these charges may be against (184) Mr. Riser. If we can - you all are the body that decides if we have put on sufficient evidence of that fact, that's true, but we are entitled to put on the evidence if we think we have evidence to show that there is an underlying motive for these charges against Mr. Riser, we are entitled to put that on. As far as the speculativeness, Mr. Bass either knows the answer to the question or he doesn't. If he does not know the answer to the question he is certainly free to say I don't know. But what I'm trying to say is, I'm entitled to probe this witness and any other witness offered by Mr. Brady to find out those things that we can find out. Otherwise, it's equivalent to not having any defense at all for Dr. Riser.

MR. NORRIS: Are you asking Mr. Bass if he is going to retire right away?
Is that what you want him to answer, to answer your question?

Q Well, my last question was does he know what would happen to Mr. Coleman's position if the Court of Appeal put Mr. Riser in it?

MR. MORGAN: What has that got to do with Mr. Riser and what we are facing today? I mean, what has that got to do (185) with the case we are looking at?

MR. PONDS: Harlan, I think what the man is saying is that his defense - if I'm wrong, certainly correct me. That there is a motive there for bringing these charges other than the face value of the charges.

Q That's entirely correct. And that is what we are trying to probe - and we think we have some evidence to that effect but we won't even be able to know until we have a chance to question these witnesses. There is no, as the Board knows, there is no discovery proceeding that we could have done before this to find out. As in a law suit, we could have taken depositions, we could have issued interrogatiories and gotten these answers. This proceeding is one where we are forced to conduct our discovery and have our trial at the same time. Now, we may uncover some information that maybe helpful to us or harmful to to us. I don't know the only way I can find out is by asking these questions. We are entitled, I think to probe - if we can show an underlying motive for these charges other than the fact of the charges themselves, I think we are entitled to do that. In fact, I know under the law we are entitled to do (186) that.

MR. BRADY: At the same time he cannot just do, you know, into any area in the world looking

for some underlying motive. He can ask direct questions that are relative to this hearing in a motive. I think, you know, we are taking up valuable time that we have here. Go ahead, and if Mr. Bass can answer this particular question, I think that is..

Q I don't intend to go far afield. There is only one underlying motive that I intend to pursue and that is the one that we think we have some evidence on, and if these witnesses answer my questions in such a manner that it proves that we do not have the evidence, then so be it. But I'm entitled to ask those questions and I'm entitled to get an answer from those witnesses whether it's yes or no or I don't know.

MR. BRADY: Why don't you ask the question and get to the heart of the matter rather than speculative questions.

Q Well, I..

MR. NORRIS: I think that would be much better. Go ahead and ask the (187) question over.

Q Okay. Mr. Bass, do you know what would happen to Mr. Coleman's position as Assistant Superintendant if Mr. Riser is placed in that position by the Federal Court?

A Well, I can't answer for the action of the Board. They would have to take action.

Q Is that your response?

A Yes, sir.

Q If Mr. Riser is appointed as - if it ordered by the Court that he be the Assistant Superintendent, would it not stand to reason that Mr. Coleman would not be?

A We would not have two.

Q Have you ever discussed with Mr. Coleman his aspirations to become the Superintendent of Education for LaSalle Parish?

A Yes, sir.

Q Do you recall a conversation that you had with Mr. Chester Floyd in recent weeks?

A Yes, sir.

Q At that time did you discuss with him his hiring - or your hiring of Mr. Brady to represent the School Board in this matter?

A Ah, Mr. Floyd did the talking on that. I didn't discuss it with him. (188)

Q But you recall that conversation?

A Yes, sir.

X X X

Q (194) Did you make a statement in your conversation with Mr. Floyd that - to the effect that if Speedy Long was going to stay on the case that you would not bring the charges?

A No, sir-ee.

Q Did you make a statement to him that the reason that you wouldn't bring charges was because he and Mr. Riser were too good a friends?

A No.

Q Did you make a statement to Mr. Floyd in your conversation with him to the effect that if the Court of Appeal were to uphold the Federal District Court (195) and appoint Cleveland Riser to the Assistant Superintendent's position, that he would be your next Superintendent and that the people wouldn't stand for that?

A No.

X X X

LaSALLE PARISH SCHOOL BOARD HEARING OF JUNE 2, 1983: TESTIMONY OF LaSALLE PARISH SCHOOL SUPERINTENDENT EDGAR BASS, UNDER RE-DIRECT EXAMINATION BY MR. JAMES BRADY, AND RE-CROSS EXAMINATION BY MR. JOHN HONEYCUTT.

(211)

BY MR. BRADY:

Q I have one or two questions, Mr. Bass. Were the charges that were brought against Mr. Riser that are the subject of this hearing at this time, brought for any other reasons than those set forth in the charges?

A No.

Q The duties of Mr. Riser certainly do not include or permit, as an employee of the School Board with the stature that he enjoys to take the liberties and make the statements to the young ladies that testified last evening, do they?

A They do not.

Q The evaluation forms that have been introduced into evidence here were conducted by you to judge Mr. Riser's performance on a work basis, is that correct?

A That's correct.

Q They were not in anyway meant to judge his character (212) with the young ladies that testified here last night?

A No, indeed.

Q And your having a duty by law and by the charge of this Board to bring charges when such incidents as are the subject of this hearing are brought to your attention that occurred, after proper evaluation, is that correct?

A That's correct.

Q Is that what you did in this case?

A That's what I did.

Q Thank you. That's all I have.

BY MR. HONEYCUTT:

Q I have just one matter to pursue. Just so that we have the two separated, based on the record, his evaluation sheet which you have said all showed satisfactory or above work, and you testified that his work - he enjoys a good work reputation for the work, you don't have any complaint with Mr. Riser's work itself, do you?

A No response.

Q I'm talking about aside from the charges of sexual harrass - I'm talking about from the work that he does in his office in performing his job and putting out the work, as you stated, you don't have any complaint with the way he does that, do you? (213)

A Now, you said besides the charges?

Q Okay, I'm not talking - I'm separating the two. On the one hand you have sexual harrassment charges, on the other hand you have the work the man performs. Your charges you have stated in response to Mr. Brady's question, deal with the sexual harrassment allegation?

A Right.

Q I'm asking you, is it not your testimony that you have no complaint with the work that Dr. Riser performed?

A I don't have any - no - if you are separating the two I

do not have any complaint.

Q Okay. that's all I have. Thank you.

LaSALLE PARISH SCHOOL BOARD HEARING OF JUNE 3, 1983: DISCUSSION AMONG MR. HONEYCUTT, MR. BRADY AND THE SCHOOL BOARD.

MR. BRADY: (16)Mr. President, and Members of the Board, this is about the eighth or ninth witness of this type that we've heard. Mr. Honeycutt, you know, can call witnesses but I would suggest that they -- they're simply getting cumulative and unless they are, have anything different or represent a different cross section-- I assume that Mr. Riser could, you know, subpoena and have present here, you know, 40 or 50 people to say the same thing, that it never happened to them. That's still not, you know, relevant as to, you know, the matters before this Board. I would suggest that the Board limit, you know, further testimony of this type.

MR. HONEYCUTT: I don't think that that's allowed under the law. First of all, and certainly I can certainly appreciate Mr. Brady's position in wanting to limit some testimony to -- especially rebuttal testimony to the testimony he's put on. First of all, I will say Revised Statute 1743, which is the Statute under which (17) these charges are brought, which states:
The teacher shall have the right to appear before the Board with witnesses in his behalf and counsel of his selection, all of whom shall be heard by the Board at said hearing. So, the law does not provide for the Board to limit the witnesses, first of all. Secondly, we're talking about 27 years of a man's career and 50 years of a man's life and reputation at stake, and I think it's not too much of an inconvenience upon the rest of us to hear these witnesses, if they take five minutes or if they take 55 minutes. That's a long time, and these are serious allegations, and there's a lot that could be suffered here. And

under the letter of the law, first of all, we're required to do these things, and, secondly, I think there's that much at stake, even if it was not required by law.

MR. BRADY: I don't think that anything in the law, you know, necessarily means that the Board has to sit here and listen to witness after witness after witness. I would be willing to -- if Mr. Honeycutt would tell me the names of the persons that he's going to call, I'd be willing to ask them if they, they are going to testify in that manner, and then would be willing to stipulate. I think (18) that would save some time. Other than that, if the Board desires to hear them I will, too.

MR. HONEYCUTT: I appreciate the offer -- but I don't think -- again, I don't think there's anything clearer than the language that "all of whom shall be heard by the Board." And in a normal proceeding I would be happy to enter into such a stipulation, but again we're talking about 27 . . .

MR. BRADY: Well, we're wasting . . .

MR. HONEYCUTT: . . . years of a man's career, his reputation and his entire life that could suffer severe damage. And I think that these witnesses -- they're not taking very long, we're moving along fairly rapidly than we were last night, and we're going to be through in a very short period of time. We have three or four more, it's true, but because of the importance I think the Board should, should have a chance to, to visualize the people that are sitting in this chair, to judge their demeanor, and to listen to what they say, who they are rather than to enter into any stipulation without them knowing them.

MR. BRADY: I think -- then within that basis, let's go ahead, the Board should go ahead and hear it. (19)

MR. NORRIS: All right.

MR. BRADY: I withdraw my objection.

LaSALLE PARISH SCHOOL BOARD HEARING OF JUNE 3, 1983: - TESTIMONY OF FORMER SCHOOL BOARD MEMBER CHESTER FLOYD, UNDER DIRECT EXAMINATION OF MR. HONEYCUTT.

(59) SCHOOL BOARD MEMBER NORRIS: Why do you think Judge Scott might come over here, Chester?

A Because I feel like at least one bright person out of them quarters will ask him to come. I don't know which one it will be, there's a lot of them out there.

SCHOOL BOARD MEMBER NORRIS: All right.

A Does that answer your question?

SCHOOL BOARD MEMBER NORRIS: Yes, sir.

MR. BRADY: Did you respond to (60) Mr. Honeycutt's question?

Q Did you discuss the possibility of Mr. Bass's retirement at that time?

A Yes, sir. We, we talked about it a little bit.

Q And what did he say?

A Well, the first thing he said . . .

Q Well, first of all, did you ask him about retirement?

A I didn't exactly ask him. I told him that it wouldn't be no schools down there, and he said: yes. And, Mr. Coleman -- of course, he was arguing, too.

X X X

Q Can you proceed.

A Well, I get plumb lost. When I, when I mentioned Judge Scott coming in, I told them what would happen to the two schools, they didn't believe that.

Q Did you ask him if he was ready to retire?

A No, that wasn't the way it came up. I -- if you'll just let (61) me tell it, I will tell facts. It will be facts.

Q Tell us how it happened.

A He said, and I told him that's what would happen, and I also told him, I said: now, if Cleveland Riser keeps a-batting like he's a-batting now, he's going to beat you again, too. Ed said: if he beat him, if he did win this case he would resign. That's when I said: well, that's what you want to do anyhow, isn't it? Well, he said: I'll resign if he, if he wins the case, this case I'll resign. I said: now, Ed, I said: ain't it a fact that you're already wanting to resign today, retire today? And I said: you want to, this whole thing concocted to pull at the right and appropriate time to help someone else, at least one other person or maybe two. He said: no. Wanted to know what you're talking about. I said: well, I think you already know what I'm talking about. I never did call a name. But I still think he knows what I'm talking about, and I think you gentlemen do, too. and . . .

X X X

A I told him I thought his, his retirement that, that this charges against Dr. Riser has a lot to do with his retirement. (62) That's what it actually amounted to. And he said it did not. Of course, I couldn't dispute that, that's his word, not mine. And I believe that ended the retirement, the best I can remember it.

Q When you talked, when you made reference to he was doing all this to help one person, possibly two, who were those people you're referring to?

MR. BRADY: He never made that statement. And I'm objecting to that as being suggestive or leading.

Q Did you make . . .

A That's the exact words I said.

MR. HONEYCUTT: I believe he just testified that he confronted Mr. Bass with that statement.

SCHOOL BOARD MEMBER NORRIS: Mr. Floyd just said that statement.

MR. BRADY: All right; go ahead.

A All right.

Q My question is: you said Mr. Floyd (Bass) knew who you were talking about, the one or two people, would you tell the Board . . .

A I said I thought Mr. Bass who I was talking about.

Q I'm sorry. Mr. Bass, and then you said you thought the Board knew as well, would you tell us who that, who the one person possibly two are, and what . . .

A Now, this is for the record; this opinion of mine. Robert (62) Coleman . . .

MR. BRADY: I'm going to object. I don't want your opinion.

A Well, that's . . .

Q You made that statement to . . .

A I made that statement. It is an opinion because I have no direct information as to who it might help. I have

a reason to believe it would help at least one person.

MR. BRADY: I'm going to object to him just rambling again.

Q As the conversation came to an end, as your meeting with Mr. Bass came to an end what did he tell you?

A Well, we, we kinda got off of this hard part a little bit and, talking and he just lent over his desk right toward me and he just kinda shut up his hand and lent over and said: Chester, said: I want to tell you the whole damn thing in a nutshell; he said: Dr. Riser -- no, if we lose this suit, he was a-bumping on his desk, said: if we lose this suit said Dr. Riser is going to be your superintendent and said: we're just not going to have it. Said: we're not going to stand for it. That's -- with his hand setting on the desk and bumping it a little bit. That was our parting words right there. Only, be good and . . .

Q That was the end of your conversation?

A Yeah.

MR. HONEYCUTT: That's all the (64) questions I have. Mr. Brady may have some questions.

LaSALLE PARISH SCHOOL BOARD HEARING OF JUNE 3, 1983: CLOSING STATEMENT ON BEHALF OF CLEVELAND RISER, JR. BY MR. HONEYCUTT.

(92) BY MR. HONEYCUTT:

Mr. President and Members of the Board, we -- I don't have to tell anybody we've been here for two days doing this, and I don't intend to take a long time going over the evidence that, that you-all heard because you-all heard it as clear as I did, and everybody else so there's no need for me to rehash every witness and all of the evidence. I have one or two points to make and I'll be seated and it'll be in your hands.

What we have, or what we're facing here, or you're facing is an individual who has over half of his life devoted to the work of the LaSalle Parish School Board. For 27 years he's compiled a record as an educator and as administrator. That record is, has been introduced as one of our exhibits and it is essentially (93) unblemished for almost 30 years. You heard Mr. Riser testify that he would stand by that record and everything in it. There's only a couple of things that really need consideration here, and I think probably the primary one is Chester Floyd's testimony of his conversation with the superintendent of schools, Mr. Edgar Bass. Apparently all of you know Chester Floyd and have had contacts with him and you know him, and his reputation and what he stands for and what kind of person he is. I'm sure all, each of you know him much better than I.

I think you also know that he has absolutely nothing to gain by coming in here and telling any untruths to this Board. On the other hand, I think it's equally as clear that Mr. Bass would have a lot to lose by conceding that he

made those statements to Mr. Floyd. And I'm making particular reference to his parting comments which we maintain, and we have maintained all along and we continue to maintain and we will maintain in the future if necessary, is the underlying motive behind all of these charges.

Mr. Bass himself testified that he had no complaints with the competency and the way Mr. Riser has conducted himself and his business. He had no complaint; in fact, he said he had no complaints and that everything he did as an educator and administrator was satisfactory. If that's true I don't think that's -- there has absolutely been no evidence that he has done anything less than diligent in his work, has been anything less than diligent in his work. He's a proud man. He's proud of his record and he's proud of his career.

The simple problem is the evidence is not there. There's no evidence to convict this man of these, of these charges. I -- we've heard a lot of evidence and I certainly don't know everything but I -- I like to think I know right from wrong. And I think in this case it would be wrong, very wrong to deprive this (94) man of his unblemished and commendable career as an educator and as an administrator based on these charges, but particularly in light of what we believe we have exposed and what we believe to be the express motive underlying these charges.

Thank you.

DISTRICT COURT TRANSCRIPT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CLEVELAND RISER, JR.	*	
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VERSUS	*	CI. ACTION
	*	NO. 33-2237
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	*	
LASALLE PARISH SCHOOL	*	
BOARD, ET AL	*	
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PROCEEDINGS HAD AT ALEXANDRIA, LOUISIANA, BEFORE THE HONORABLE NAUMAN S. SCOTT, U. S. DISTRICT JUDGE, WESTERN DISTRICT OF LOUISIANA, BEGINNING AT 9:00 A.M. ON THE 7TH DAY OF JANUARY, 1987.

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APPEARANCES:

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COUNSEL FOR DEFENDANTS

GRAVEL & BRADY
BY: JAMES J. BRADY
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COUNSEL FOR DEFENDANTS

(3) (THEREUPON THE FOLLOWING PROCEEDINGS WERE HAD IN CHAMBERS, COUNSEL PRESENT)

THE COURT Let the record reflect that we are in Chambers in a pre-trial conference and that all attorneys are present; that the Court has ruled that it will accept the transcript of the hearing had before the school board in evidence, and you all may make that a joint offering, if you wish; that none of the character witnesses, I think I have been informed that there are some eight character witnesses who have already testified, and some rather extensively, in the school board hearing, and the Court has

ruled that it will not hear more, that is, reputation witnesses, will not hear additional reputation witnesses, and if you have some who are not in the record, we could say that I have suggested that the parties stipulate that those, as well as the ones who might be here who previously testified. If they testified at that time. That their testimony would be the same as if made at the previous hearing, and it would not be necessary to call them. What is the other thing that just came up, Mr. Marcus?

MR. MARCUS: We have some school board members who are parties defendant that we would put on to testify as to the basis on which they made the (4) determination to discharge Mr. Riser.

THE COURT: And the Court will hear those also, it has been mentioned before the Court here this morning that the defense attorneys have had previous consultation with plaintiff attorney and have agreed to subpoena and to have present as many of the complaining witnesses, I guess you could say, the ladies who testified at the hearing. To have them present here today; that they have attempted to accomplish that; that they have been subpoenaed, but two of them were unable to be served, no longer live in the area, and that a successful serving of the subpoena was accomplished on, how many, four?

MR. BRADY: Four.

THE COURT: On Four. They are present.

They will not be called by the defense, but they are available for calling on cross-examination by the plaintiff counsel if he wishes to do so. Is there anything else that we covered?

MR. CHEMINO: Excuse me, Your Honor. On calling them on cross, would that be during the plaintiff's case in chief?

THE COURT: Yes, you could do that.

MR. CHEMINO: Your Honor, is it my understanding that none of the reputation witnesses will (5) be allowed to be called by the plaintiff to testify pursuant to the pre-trial order that you have prepared?

THE COURT: Yes. In other words, I just feel that that is enough reputation witnesses. You could probably get thirty, but that is not going to make a difference.

MR. CHEMINO: Based on the fact that they had testified at the hearing and that their testimony today would be repetition.

THE COURT: Yes. Repetitious of what they testified before.

MR. CHEMINO: Your Honor, would that also exclude any testimony by Mr. Chester Floyd who testified at that hearing?

THE COURT: I think so. If he testified extensively as he did before the Board. I know that you can always think of something else to say. But that doesn't mean I should allow it. And I assume with eight reputation witnesses, that is far more than I would have allowed if there were a hearing that was coming on for some other thing and I allowed reputation witnesses. I certainly wouldn't allow more than three. And so at this time I think that is well covered.

MR. CHEMINO: The plaintiff realizes that the

Court has already ruled on the character witness issue (6) and for the record would object to the ruling. At this time, after going through the pre-trial with you, it appears that the only witness that I have left is Mr. and Mrs. Riser to testify, and that seriously cripples any case that I have prepared to present on Mr. Riser's behalf. What I'm getting at is the defendants have suggested that they will call some of the school board members to testify, and I realize that I would have an opportunity to cross-examine them. But in a way I feel that it is possible that some of my character or reputation witnesses could be valuable possibly as a rebuttal witness to some of the stuff that was said by the school board members.

THE COURT: Well. It is there in the record.

MR. BRADY: We are going to ask them about questions, you know; were they a board member; did they hear the evidence; what did they do.

THE COURT: And let me elaborate on that. This is in a way sort of an appeal. So that most of the case is already in. There has been a hearing, he has introduced all of the evidence. I don't think that we can look at it as if nothing has been done. We are admitting that record. And what you are urging me to do is to do it all over again, and I'm not going to do that. I don't think that to have them say it again before me (7) is going to make the case any better. And if it would, I wouldn't take that attitude, but I think I have their testimony and I don't need it repeated.

MR. CHEMINO: Your Honor, inasmuch as--

THE COURT: Now, Mr. Riser may feel that perhaps he ought to have them come again, but that is something else. I mean the parties often disagree with what the Court does.

MR. CHEMINO: I respect the findings and the opinion of the Court. But I have to ask you concerning, and I realize it takes the form of an appeal today coming from the tenure hearing that was held, but does the Court entertain any issues that Mr. Riser alleges of possible defamation of of his loss of reputation as a result of any publicity that flowed from the news releases or any--

THE COURT: No, that is not pertinent. I mean they have a right to have a hearing to make charges against a teacher. That is just a matter of law. I'm taking no - giving that no attention whatsoever.

MR. MARCUS: Does the Court want to hear any evidence with respect to absence of monetary loss? There was non here.

THE COURT: I don't know exactly what you are referring to.

MR. MARCUS: Well. Mr. Riser was discharged. (8) But as a consequence of compliance with the prior case that you had, the case in which he said he was discriminated against and the Court found that he as discriminated against because he wasn't promoted to assistant superintendent. He was put back to work and he suffered no - and he was given back pay and he suffered no monetary losses.

THE COURT: In other words, the monetary part of that has been fulfilled?

MR. MARCUS: Yes, Sir. Now, we could - in the event the case goes against us, we could have a supplemental hearing on damages, and that would be all right with me.

THE COURT: That's all right. Let's not do that today. But it is my understanding, though, that as far as the re-instatement, he has been re-instated insofar as holding the office and getting the pay therefore until the date that he was terminated.

MR. MARCUS: Until the date he retried.

MR. BRADY: He was actually in our calculations overpaid about eight thousand dollars.

MR. CHEMINO: Your honor, pursuant to what we have decided today and the court has entered into the record, all of the reputation witnesses that I subpoenaed to be at trial today, can I dismiss them? (9)

THE COURT: Yes.

MR. CHEMINO: Now?

THE COURT: Yes. And since I assume this was done before the reporter came in, we will have a stipulation that if they appeared and testified today that their appearance, along with any additional ones you might have had, would be to the same effect as they testified at the hearing.

MR. MARCUS: We are agreeable to that, your Honor.

THE COURT: Okay, I think we can go forward.

X X X

DISTRICT COURT TRANSCRIPT, PAGES 61-71 TESTIMONY OF LaSALLE PARISH SCHOOL BOARD MEMBERS; MR. NORRIS AND MR. McCARTNEY.

Q (61) Let me ask you this; Did you participate in any investigation that may have been made by any attorney or investigation for the school board prior to that hearing?

A No, sir, I did not.

Q Did you concur in the school board's conclusion that Mr. Riser should be discharged?

A Yes, sir.

Q Did you base your determination that Mr. Riser should be discharged on the evidence which you heard the witness give at the tenure hearing?

A Yes, sir.

Q Did the fact that Mr. Riser had sued the school board over the assistant superintendent job have any bearing whatsoever on your decision that he should be discharged?

A None whatsoever.

Q Now, it has been alleged in the complaint in this case that Mr. Riser or Doctor Riser also acted with or cooperated with the government on a school board reapportionment investigation in LaSalle Parish. Were you aware of that at the time of the tenure hearing?

A I'm sure that I was, yes, sir.

Q All right. Did the fact that he had participated with the justice department in that investigation have any bearing whatsoever on your decision that he should be (62) discharged?

A None whatsoever.

Q What was the basis for your decision that he should be discharged?

A The results, the testimony at the hearing.

Q Now, sir, assume that Doctor Riser had not engaged in these activities, the reappointment cooperation or filing the suit against the school board, would you have arrived at the same conclusion based upon the evidence you heard he should be discharged?

A Yes.

Q Okay, I want you to assume that it was not Doctor Riser who had been involved but say someone else, maybe even myself. If you heard the same evidence about me and I was an employee of the school board, would you have arrived at the same conclusion that I should be discharged?

A I certainly would have.

Q Now, after the testimony was taken, the transcript shows that you all went into executive session, is that correct?

A Yes, it is.

Q And I think that the record shows that you were in executive session for about three and a half hours; would you go along with that? (63)

A Yes, sir. Somewhere near that.

Q What amount of time was taken up by the board in determining whether Doctor Riser was guilty of the charges which had been brought against him?

A A very small amount of the time.

Q Okay. Was the board unanimous on that question?

A It was unanimous, Yes, sir.

Q From the beginning?

A From the beginning it was unanimous.

Q Okay. Why did it take you three and a half hours to arrive at your decision then?

A Well, we was concerned about Mrs. Riser, the children, and the community and what effects this might would have on the community, and we discussed those items, what might be the reaction of the people and so on. That was about it, but our decision for unanimous was very quickly.

Q So the balance of the time - is it fair to say that the balance of the time was taken up with deciding what you should do about it?

A Yes, sir.

MR. MARCUS: No further questions. Would you answer counsel's questions, please, sir.

CROSS EXAMINATION

BY MR. CHEMINO:

Q (64) Mr. Norris, my name is Scott Chemino--

A How do you do, sir.

Q --Representing Mr. Riser. Do you know who was responsible for the gathering - Do you know who was responsible for the gathering of any evidence that was to be presented at the hearing by the school board, information and evidence that would have been gathered for the school board?

A I do not.

Q Were you ever consulted in terms - previous to the rehearing date in preparation for that hearing and the gathering of that evidence were you ever involved in making any policy decisions as to the allocations of money to fund the investigation or to - excuse me, to fund the investigation?

A No, sir.

Q Do you know who was responsible for spearheading the investigation or seeing that this was done through the efforts of the school board?

A I do not.

Q Did you ever inquire as to who was gearing the investigation, say, from the school board office?

A Let's see. I knew about it when everyone else knew. I didn't inquire, didn't know anything about it up until, you know, a specific time. I didn't (65) know anything about the investigation whatsoever.

Q Yes, sir. When did everyone else know at the time that you knew?

A I would say that when we got ready to hire an attorney.

Q And when was that prior to the hearing, do you know?

A I would have to project; a couple of months, I'm not sure. I'm not sure about that.

Q You just testified and I'm not trying to--

A We are going back to '83.

Q But you just testified that you weren't aware of the investigation that was going on or who was gearing the thrust of the investigation from the school board office, but you immediately just testified that you were aware that an attorney would have to be hired approximately two months before the hearing, is that correct?

A Thirty days or something, you know, of that nature, yes, sir.

Q Was any complaint ever directly made to you by any one of the alleged complainants who complained of sexual harrassment?

A No, Sir.

Q Did you at any time make any recommendations to the board prior to your discussions at the hearing of a formal action having to be brought against Doctor Riser (66) pursuant to these allegations?

A No, sir.

Q If you can recall, who and how did you immediately find out about the allegations? My question is; who notified you as to the charges of sexual harassment about Doctor Cleveland Riser?

A Let's see. It would be - I would say the superintendent did.

Q Do you recall when he would have done that?

A Probably thirty days before the hearing.

Q Probably. Do you know for sure?

A No, sir, I don't know for sure. I don't have the facts right in front of me to tell you the exact date, no sir.

Q There has been testimony given that some complaints were made to the school board--

A Not to me.

Q --As early as two years prior to 1983?

A I can only speak for myself.

Q You at no time were the recipient of any of those complaints?

A No, sir.

Q You were a school board member for how long prior to 1983?

A I came on the Board in 1970.

Q (67) And no school board member or the superintendent or the president ever approached you and said that they had had allegations brought against Cleveland Riser concerning sexual harrassment prior to your knowledge of, say a month before as you have testified?

A No, sir.

MR. CHIMINO: Thank, you Mr. Norris.

THE COURT: Any further questions?

REDIRECT EXAMINATION

BY MR. MARCUS:

Q Mr. Norris, you were asked when you were apprised by the superintendent that these allegations had been made. Let me ask you, did you receive that information at a meeting of the school board from the superintendent?

A That's right, yes sir.

Q And that was what, a month or so before the hearing?

A I would say so, yes, sir.

MR. MARCUS: Thank you very much.

THE COURT: You may step down, Mr. Norris.

THANK YOU.

(WITNESS EXCUSED)

THE COURT: You may call your next witness.

MR. MARCUS: Mr. McCartney.

W. B. McCartney

A Defendant, called as a witness in his own behalf, and (68) having first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARCUS:

Q Would you give us you full name and address, please, sir?

A W. B. McCartney, 1417 North First Street, Jena, Louisiana.

Q And what do you do for a living, Mr. McCarthy?

A I'm self-employed.

Q Have you been a member of the LaSalle Parish School Board?

A Yes, sir.

Q When did you first become a member?

A I believe about 1970.

Q And were you a member of the board in June, 1983 when the tenure hearing involving Doctor Riser took place?

A Yes, sir.

Q Did you participate in that hearing?

A Yes, sir.

Q And did you hear the testimony of the witnesses and the arguments of the attorneys at that hearing?

A Yes, sir.

Q Did you believe the seven young ladies who testified in behalf of the board with respect to their encounters (69) of, I will call it, sexual harrassment from Doctor Riser?

A Yes, sir.

Q Sir, did you participate in any investigation that the board or people hired by the board may have made or the superintendent may have made prior to the tenure hearing?

A No, sir.

A Did you base your determination that Doctor Riser should be discharged on the evidence that you heard at the tenure hearing?

A I did.

Q Did the fact that Doctor Riser had sued the school board over the promotion to assistant superintendent have any bearing whatsoever on your decision to discharge him?

A No, sir.

Q Were you aware at the time of the tenure hearing that Doctor Riser had any participation with the justice department on the investigation which resulted in the eventual reapportionment of the LaSalle Parish School Board?

A No, sir.

Q You didn't know about it at the time?

A No, sir.

Q What was the basis for your decision that Doctor Riser should be discharged?

A (70) I based my decision on the evidence that I had heard during the proceeding.

Q If Doctor Riser had not engaged in the assistant superintendent suit or other activities which may have alleged race discrimination or his right to speak out and you had heard the same evidence that you heard at that tenure hearing would you have arrived at the same conclusion that Doctor Riser should be discharged?

A Yes, sir, I would have.

Q And I will ask you also; assume that I was the person who was charged and I was a teacher in the system or an administrator in the system and you heard the same evidence against me that you heard given against Doctor Riser, would you have arrived at the same conclusion that I should also be discharged?

A Yes, sir.

Q Now, the transcript of testimony of the tenure hearing shows that the board was in executive session after

the testimony was concluded for about three and a half hours; would you go along with that?

A Yes, sir.

Q (71) Did the board arrive at a conclusion as to whether Doctor Riser was guilty of the charges which had been made against him?

A Yes, sir.

Q And about how long did it take for you to arrive at that conclusion?

A Well, that decision did not take very long.

Q Okay. Then could you tell us why it took three and a half hours for you to conclude your deliberations and announce your results?

A Well, our discussions was around what should be done about it. There was a lot to be considered; his professional reputation, his family there, and the welfare of the community.

Q Did you consider alternatives?

A Yes, sir.

MR. MARCUS: Thank you very much, sir.

(75) MR. MARCUS: Your honor, the other members of the board, most of them who were on the board at that time are here, but I think the testimony would be repetitious, I'm not going to call them. If Mr. Chemino wants any of them on cross-examination I will make them available.

THE COURT: All right, sir.